

1 By then, on December 20th, both parties will
2 submit proposed findings of fact and conclusions of law, and
3 by December 30th, both parties will submit their reply,
4 proposed findings and conclusions of law. With the proposed
5 findings on the 20th, there will also be -- there will be a
6 section that will address the question of an appropriate
7 forfeiture in the event that the facts in this case would
8 warrant a forfeiture, and that is in accordance with what
9 the hearing designation order addresses on the forfeiture
10 issue, and that's all I have, and I will issue an order this
11 afternoon or tomorrow confirming all these dates.

12 Now, Mr. Kittner, did you have something more that
13 you wanted to address at this time?

14 MR. STEVENS-KITTNER: Yes. I wanted to, I guess,
15 emphasize that this case was designated on a
16 misrepresentation issue, and that's the only issue in the
17 case. It's not about -- it's not about whether Mr. Loreda
18 was careless, it's not about whether he was inadvertent,
19 it's not about whether he had language problems. It's about
20 whether he intentionally misrepresented his citizenship
21 status.

22 I didn't hear any evidence that the Bureau
23 produced today that suggested any sort of illicit motive.
24 We are here scaring the beejeezus out of Mr. Loreda --

25 MR. ZAUNER: Your Honor, I am going to object to

1 this. This is a statement by counsel. He can put this in
2 his proposed findings and conclusions.

3 JUDGE SIPPEL: I want to hear what he has to say.

4 MR. STEVENS-KITTNER: I don't understand what the
5 government -- what the public interest that the government
6 is vindicating in this case is. I don't understand what Mr.
7 Zauner and what Ms. Ellington are doing here. They were
8 able to verbally spar with Mr. Loredo and show Your Honor
9 that Mr. Loredo wasn't quite up to sparring with them. But
10 they didn't -- they didn't adduce a scintilla of evidence
11 that Mr. Loredo was somehow out to do something illicit.
12 They didn't suggest any sort of motive. He was in the
13 process of acquiring a construction permit. It's very
14 apparent that he didn't know what he was doing, for better
15 or for worse, for right or wrong. Maybe he should have, but
16 he obviously didn't.*

17 He came forward and told the Commission. Where
18 could you possibly find that there is a misrepresentation in
19 this case? And why are we going forward with proposed
20 findings and conclusions of law? He is going to have to pay
21 lawyers. He is going to have to wait. He's going to have
22 to be nervous for another few months. I just don't get it.

23 JUDGE SIPPEL: Did you ever address these
24 arguments to the Bureau?

25 MR. STEVENS-KITTNER: No, we never had an

1 opportunity. There was somebody in the Audio Services
2 Division who one day slapped us with this order. And now we
3 are all being slaves to this order. I know who did it. And
4 I don't understand what we are doing.

5 JUDGE SIPPPEL: All right. The record, I think,
6 will be very clear that there is an element of emotion that
7 is coming across with what you are arguing too, and I
8 understand exactly what you are saying and why you are
9 saying it. And I think that it's important for these --
10 that at least to this extent, that this be aired right now
11 with Mr. Loreda in the room.

12 But let me ask counsel this. Let me ask Bureau
13 counsel this. Would the Bureau be, and you might have to
14 check with your superiors on this, but would the Bureau be
15 willing to listen to this argument that Mr. Kittner is
16 making in the context of settlement discussions after what
17 you've heard today?

18 MR. ZAUNER: Your Honor, we've got a record. We
19 have a procedure for resolving the issues. I don't think
20 that proposed findings are going to be very extensive in
21 this proceeding. The testimony probably took less than an
22 hour. I can see maybe a few paragraphs of findings and a
23 paragraph or two of conclusions, and the time we are
24 spending arguing about it, we are spending more time than it
25 will take to do the work.

1 I am not aware of any mechanism that would allow
2 us to settle this thing short of an initial decision, unless
3 there was a motion for summary decision, and a motion for
4 summary decision would be the same thing, in effect.

5 JUDGE SIPPEL: No, no, that's not what I am
6 asking. That's not what I am asking.

7 Did you -- did you want to say anything in
8 response to what Mr. Kittner said?

9 MR. ZAUNER: Your Honor, the hearing designation
10 order, when it's issued by the Mass Media Bureau, is under
11 delegated authority is the same as a hearing designation
12 order issued by the Commission, and we have to follow the
13 instructions in the hearing designation order, and that's
14 what we have been doing here.

15 JUDGE SIPPEL: All right. All I am going to say
16 is, and, again, this case is being treated as a case, an
17 evidentiary case on the merits under the APA, and that's why
18 I feel that I have a responsibility of making a complete
19 record, and that's why I am asking for this additional
20 information between now and the closing date on the record.

21 However, I would certainly be open to receiving
22 any report of any further discussions that was carried on
23 between counsel for Mr. Loreda and counsel for the Bureau,
24 and at a level where some, some decisions could be made with
25 respect to an appropriate forfeiture. That's all I can say

1 right now. I am not prejudging anything about this case.

2 And I have observed the witness's demeanor, and I will
3 review the transcript very carefully, along with the briefs,
4 if that's the way that this case needs to be resolved.

5 I am just simply saying that I am open to hearing
6 some more about a forfeiture possibility between now and the
7 time that you submit your findings.

8 That's all that I have. It's 10 after 11. The
9 hearings aspect of this case then is completed. I want to
10 thank counsel very much, and we are in recess until, if
11 necessary, until further order. Thank you.

12 (Whereupon, at 11:10 a.m., the hearing was
13 concluded.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 96-172
CASE TITLE: Mario Loreda
HEARING DATE: November 14, 1996
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 11/14/96

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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 11/19/96

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PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 11/20/96

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